



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/107/B/13-RA / 1133

Date of Issue : 13.02.2018

ORDER NO. 46/2018-CUS (SZ) / ASRA / MUMBAI / DATED 12.02.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Sithik Ameersultan.

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C.Cus No. 1269/2013 dated 17.09.2013 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Sithik Ameersultan (hereinafter referred to as the Applicant) against the order no 1269/2013 dated 17.09.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the appellant was proceeding to board a flight from Chennai to Colombo on 20.11.2012 when he was intercepted by the officers of the Air Intelligence Unit, Chennai. Examination of his baggage resulted in the recovery of Indian currency equivalent to Rs. 1,80,000/- from the Applicant. As the Applicant had carried the Indian currency beyond the limit of Rs. 7,500/-, the Original Adjudicating Authority confiscated the Indian currency absolutely, under Section 113 (d) of the Customs Act 1962 read with FEMA 1999, a penalty of Rs.10,000/- was imposed under Section 114(a) of the Customs Act, 1962.

3. Aggrieved by the order of the Original Adjudicating Authority, the Applicant filed an appeal before the Commissioner of Customs (Appeals). The Commissioner of Customs (Appeals) Chennai, rejected the Appeal on the grounds that the Applicant was carrying Indian Currency beyond permissible limits without any specific permission.

4. Aggrieved by the order of the Commissioner (Appeals), the Applicant has filed the Revision Application on the following grounds;

4.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.

4.2 That he had borrowed the currency from persons residing at his native place. He was unaware that currency could not be taken out of the country or that it was an offence.

4.3 There was no contumacious conduct on the part of the appellant but the conduct of a person who was ignorant of the law. Since he violated the provisions of Customs Act, 1962 and FEMA 1999.

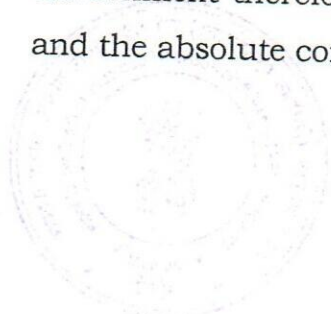


4.4 The detection in this case was not in pursuant to any information. The applicant when asked whether he had any foreign currency himself declared that he possessed Indian currency and voluntarily gave the currency to the officers. There was no misdeclaration.

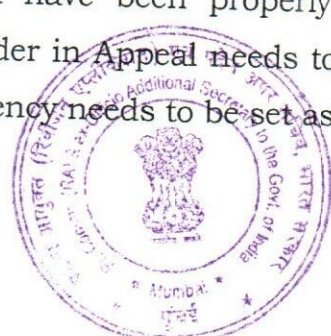
The Applicant has cited various assorted judgments in support of his case and prayed that the Hon'ble Revision Authority may please release the Indian currency sum of Rs. 1,80,000/- on payment of redemption fine and reduce the personal penalty sum of Rs. 10, 000/- and thus render justice.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed in the grounds of Appeal and pleaded that the Order in Appeal be set aside. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant was carrying Indian currency beyond permissible limits. He was not having any documentary support or any specific permission for the same. However, the facts should be seen in its entirety. The Applicant voluntarily disclosed that he was carrying Indian Currency. If he had not disclosed the same he could have walked off without being discovered by the Customs officers. The very fact that he revealed the Indian currency to the Custom officers exposes his naivety and ignorance. Under this background the absolute confiscation is harsh and not commensurate with the facts of the case. Before proceeding for absolute confiscation the facts of the case should have been properly scrutinized. Government therefore observes that the Order in Appeal needs to be modified and the absolute confiscation of Indian currency needs to be set aside.



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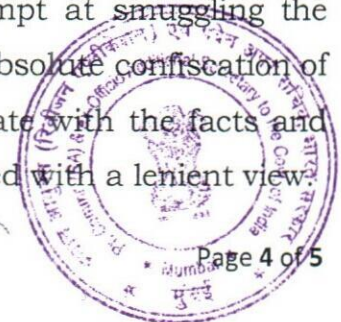


7. There are numerous judgments wherein currencies have been released on payment of redemption fine and penalties. Further, the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In a reported judgment in the case of Chellani Mukesh reported in 2012 (276) ELT 129 (GOI), the Hon'ble Revisional Authority has held that *"consequent to liberalisation and various decisions of CESTAT/GOI, Govt. feels that absolute confiscation is very harsh and an option for redemption can be given under Section 125 of the Customs Act, 1962. Accordingly, the confiscated Indian currency is allowed to be redeemed on payment of Redemption Fine in lieu of confiscation, under Section 125 of the Customs Act, 1962."*

The ratio of the said judgement is squarely applicable to the facts of this case.

8. In the case of Hargovind Das vs Collector of Customs 1992(61) ELT 172 (SC) the Apex court has held that *"The Collector of Customs has passed an order for absolute confiscation of the imported goods without giving the appellants an option to redeem the same on payment of such fine as may be considered appropriate by him..... We are of the opinion that since the Additional Collector of Customs who passed the order for absolute confiscation had the discretion to give the option for redemption, it was but just, fair and proper that he addressed himself to this question. The order passed by the Additional Collector of Customs as confirmed by the Customs, Excise and Gold (Control) Appellate Tribunal therefore requires to be modified only to this limited extent"*. In the instant case also the option for redemption was not exercised by the Original Adjudicating authority.

9. Government also observes that the currency being taken abroad was not in commercial quantity. There were no allegations of ingenious concealment of the currency, and neither was there a concerted attempt at smuggling the currency out of India. Government therefore holds that absolute confiscation of the foreign currency is very harsh and not commensurate with the facts and circumstances of the case and the applicant can be treated with a lenient view.



10. Taking into consideration the foregoing discussion, Government, sets aside the absolute confiscation in the Order-in-Appeal No. C.Cus No. 1296/2013 dated 17.09.2013 passed by the Commissioner of Customs (Appeals) Chennai and allows redemption of the confiscated currency in lieu of fine. Hence, Government allows the impugned Indian currency of Rs. 1,80,000/- to be released on payment of redemption fine of Rs. 50,000/- (Rupees Fifty Thousand). Government also observes that facts of the case justify slight reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 10,000/- (Rupees Ten thousand) to Rs. 5,000/- (Rupees Five thousand) under section 112(a) of the Customs Act,1962.

11. The impugned Order in Appeal 1269/2013 dated 17.09.2013 is modified as detailed above. Revision Application is partly allowed.

12. So, ordered.

(Signature)
12.2.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 46/2018-CUS (SZ)/ASRA/MUMBAI

DATED 12.02.2018

To,

Shri Sithik Ameersultan
C/o Shri S. Palinikumar, Advocate,
No. 10, Sukurama Street,
Second Floor,
Chennai -600 001.

True Copy Attested

(Signature)
13.2.18

एस. आर. हिरुलकर
S. R. HIRULKAR
(A-C)

Copy to:

1. The Commissioner of Customs, Chennai-I.
2. The Commissioner of Customs (Appeals-I), Chennai.
3. Shri S. Palinikumar, Advocate, No. 10, Sukurama Street, Second Floor, Chennai -600 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.



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